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REMARKS

Claim 8 was objected to based upon an informality. That claim has been amended and as amended the objected to phrase has been deleted.

Claims 8 through 10 were also rejected as obvious over the Takizawa et al. '730 and the Kumm '458 references. The Takizawa et al. reference discloses a control system that involves feedback control to adjust the operation of a continuously variable transmission to conform with operating values derived from a transmission ratio data map based upon sensed input values. However, that reference does not even mention accounting for transmission wear over time to adjust control functions, and it does not teach adjusting preliminary control values to account for wear conditions that the transmission undergoes over time. Instead, the Takizawa et al. reference teaches a system for detecting and correcting for instantaneous deviations from parameters that are defined in the control parameter maps disclosed in the reference. And the parameters as defined in those control maps are not changed or adjusted as a result of transmission operation over time to reflect wear of transmission parts.

Moreover, as stated in the Takizawa et al. reference: "It is therefore an object of this invention to prevent an extraordinary speed ratio control from being performed when an abnormality is detected in any of the rotation speed sensors." (Takizawa et al., col. 1, lines 44 through 47). The reference teaches the detection of an abnormality in the operation of speed sensors to correct "the

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predetermined speed ratio range to be narrower when any of the sensors has been determined to have abnormality." (Takizawa et al., col. 2, lines 9 through 11). And the detection is made by assessing if there is a breakdown in the signal path in the sensors (Takizawa et al., col. 20, line 62 through col. 21, line 25) and by calculating speed ratios and comparing the calculated speed ratios with predetermined speed ratio ranges (Takizawa et al., col. 21, line 26 through col. 22, line 7; and Figs. 18A and 18B). The Takizawa et al. reference does not mention wear of transmission parts, nor does it account for any transmission part wear.

Additionally, as acknowledged by the examiner, Takizawa et al. "does not explicitly disclose storing the operating parameters associated with reference transmission ratios in a memory." As also acknowledged by the examiner, the reference "does not teach storing the preliminary control value and adjusting the preliminary control value so that the measured transmission ration coincides with the reference transmission ratio when the control variable is approximately zero." Those differences, along with the different problem to which the present invention is directed, which as recited in claim 8 is "to account for changes in transmission operation caused by wear of transmission parts," clearly demonstrate that the Takizawa et al. reference does not even suggest the desirability of the claimed invention, let alone its features. And because it is not directed to and does not discuss that problem it does not teach a solution to that problem.

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Furthermore, the mere fact that something is known in the abstract, or that something *could* be done, does not make its adoption and use in a particular device or environment obvious without some suggestion in the prior art to motivate one to do so. One can hypothesize at length about what another person would do in particular circumstances, but without some disclosure or specific motivation the hypothesis is merely guesswork and cannot be realistically said to amount to a suggestion to someone to do what an inventor has done. As the Court of Appeals for the Federal Circuit has recently stated:

[T]he deficiencies of the cited references cannot be remedied by the Board's general conclusions about what is "basic knowledge" or "common sense" to one of ordinary skill in the art....[The] assessment of basic knowledge and common sense was not based on any evidence in the record and, therefore, lacks substantial evidence support....With respect to core findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience – or on its assessment of what would be basic knowledge or common sense. Rather the Board must point to some concrete evidence in the record in support of these findings.

In re Zurko, 59 U.S.P.Q.2d 1693, 258 F.3d 1379, 1385-86 (Fed. Cir. 2001).

Thus, as was the case in *Zurko* and the conclusions that were reached by the Board of Appeals in that case, the examiner's conclusions in this case of what would have been obvious to a person of ordinary skill in the art lack evidentiary support and cannot therefore form the basis for an obviousness rejection.

Additionally, in this instance there is no suggestion that would lead one to do what the examiner has suggested would be obvious. Indeed, the only basis for the obviousness conclusion is the present disclosure, because, as

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already acknowledged by the examiner, the Takazawa et al. reference taken alone does not teach the claimed invention.

With respect to the Kumm reference, that reference is directed to a flat belt transmission in which calculations of belt slip are utilized to adjust operating pulley speed ratio. (Kumm, col. 3, lines 8 through 11; and abstract). And as was the case with the Takazawa et al. reference, the Kumm reference does not teach an arrangement that takes into account changes in transmission operation caused by wear of transmission parts.

Furthermore, the only basis for combining the references as the examiner has done is the present disclosure. And to use the present disclosure as a road map or a template, and then to attempt to combine parts of disclosures of particular references in an attempt to arrive at a claimed invention, when the references in no way teach or suggest such a combination, is an improper basis for rejection without some suggestion that would motivate an ordinarily skilled person to combine those parts. After all, an ordinarily skilled person is not one who is an innovator, but, instead, is guided by the conventional wisdom. And in this instance the conventional wisdom, as taught by the references, does not teach or suggest the claimed invention.

Claims 9 and 10 depend from claim 8, either directly or indirectly, and therefore those claims are also believed to be patentably distinguishable over the combination of the Takizawa et al. and Kumm references. Moreover, those claims each contain additional recitations that further distinguish the inventions so claimed from the teachings of those references.

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New claims 11 and 12 also each depend from claim 8, and they also recite combinations that are not disclosed in the references relied upon. In that regard, the references are not directed to transmissions having pairs of conical disks that have an adjustable axial spacing to allow changes to be made in the transmission ratio, as recited in new claim 11. And neither reference relied upon by the examiner discloses a torque sensor operatively positioned between an engine output shaft and a transmission input shaft for determining torque input to the transmission as a transmission operating parameter, as recited in new claim 12. In that regard, the Takizawa et al. reference specifically teaches an entirely different mode of engine output torque determination – one involving the calculation of engine output torque in an engine fuel injection pulse width calculating unit from sensed engine rotational speed and sensed engine intake air flowrate. (Takizawa et al., col. 6, lines 19 through 22).

Based upon the foregoing amendments and remarks, the claims as they now stand in the application are believed clearly to be in definite and allowable form in that they patentably distinguish over the teachings contained in the reference that was cited and relied upon by the examiner. Consequently, this application is believed to be in condition for allowance, and reconsideration and reexamination of the application is respectfully requested with a view toward the issuance of an early Notice of Allowance.

The examiner is cordially invited to telephone the undersigned attorney if this amendment raises any questions, so that any such question can be

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quickly resolved in order that the present application can proceed toward allowance.

Respectfully submitted,



July 16, 2005

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